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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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JUL - 9 2001

In the Matter of)
)
Petition of Cox Virginia Telcom, Inc.) CC Docket No. 00-249
Pursuant to Section 252(e)(5) of the)
Communications Act for Preemption)
Of the Jurisdiction of the Virginia)
State Corporation Commission)
Regarding Interconnection Disputes)
With Verizon-Virginia, Inc. and)
For Arbitration)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**OPPOSITION OF COX VIRGINIA TELCOM, INC.
TO MOTION TO DISMISS OR, IN THE ALTERNATIVE,
TO DEFER CONSIDERATION OF CERTAIN ISSUES
FILED BY VERIZON VIRGINIA, INC.**

COX VIRGINIA TELCOM, INC.

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July 9, 2001

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SUMMARY

This Opposition requests that the Commission deny a portion of Verizon's Motion to Dismiss or, in the Alternative, to Defer Consideration of Certain Issues. Cox believes the Commission should deny Verizon's motion with respect to Issue I-5, concerning compensation paid on traffic bound for internet service providers ("ISPs"). Issue I-5 continues to be a live controversy between Cox and Verizon, and this arbitration proceeding is the proper forum for resolving that issue.

The Commission adopted (but had not yet released) its ISP Order just before Cox filed its Petition for Arbitration in this proceeding. In its Answer to the Cox's Petition, Verizon alleged that the ISP Order rendered Issue I-5 moot and offered to send Cox contract language addressing compensation for ISP-bound traffic shortly. Verizon provided a Cox affiliate in California with a proposed amendment to its interconnection agreement, and this is the only contract language that Verizon has yet proposed to Cox for this purpose. Cox believes that this proposed amendment is insufficient to resolve the parties' dispute over this issue.

Cox disagrees that the ISP Order renders Issue I-5 moot and notes that the Order did not specify any contract language to implement its requirements. Further, the Commission should not rely on the parties to negotiate a settlement of this issue, which Cox believes to be highly unlikely in view of the history of its negotiations with Verizon. The Commission retains abundant authority to resolve Issue I-5 in this proceeding. The Commission should hold that its preemption of state authority over the compensation regime for ISP-bound traffic does not alter carriers' ability to negotiate a single

interconnection agreement that is subject to the dual jurisdiction of the Commission and the states. Preemption actually expands, rather than eliminates, the authority of the Commission to arbitrate on the states' behalf. Moreover, the Commission may resolve this issue pursuant to its authority under Section 201 of the Communications Act of 1934, as amended.

Cox recently proposed contract language to Verizon in an effort to settle Issue I-5. This proposal is designed to implement the ISP Order's provisions as the Commission intended. However, this language differs widely from that proposed by Verizon as an amendment to existing interconnection agreements. Cox believes that an adequate description of the parties' understanding about their specific tasks when exchanging ISP-bound traffic is a necessary component of the interconnection agreement now being arbitrated. Cox will negotiate with Verizon in good faith in an attempt to reach agreement on such language; however, the history of these negotiations indicates that such success is not likely. Accordingly, Cox will be forced to submit an amended petition for arbitration shortly if these efforts fail. Cox opposes any deferral of the Commission's consideration of Issue I-5 in this arbitration proceeding.

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FILED BY VERIZON VIRGINIA, INC.**

Cox Virginia Telcom, Inc. ("Cox"), by its attorneys, hereby opposes one issue addressed by the Motion of Verizon Virginia, Inc. ("Verizon") to Dismiss or, in the Alternative, to Defer Consideration of Certain Issues ("Verizon's Motion") filed June 27, 2001, in the above-captioned proceeding.¹ Cox opposes Verizon's proposal that the Commission dismiss Issue I-5, concerning the compensation that should be paid on traffic bound for internet service providers ("ISPs"). Cox believes that Issue I-5 continues to be a live controversy between Cox and Verizon and that this proceeding is the proper forum

¹ Verizon's Motion was also filed in CC Docket Nos. 00-218 and 00-251, concerning petitions for arbitration filed by WorldCom, Inc. ("WorldCom") and AT&T Communications of Virginia, Inc. ("AT&T"), respectively. Cox and AT&T have requested that the Commission combine their petitions with that of WorldCom for hearing purposes; these requests remain pending.

for considering that issue. Thus, Cox urges the Commission to resolve Issue I-5 in this proceeding.

I. BACKGROUND

A. COX'S PETITION, VERIZON'S ANSWER AND THE ISP ORDER

In its petition for arbitration filed April 23, 2001 ("Petition"), Cox stated Issue I-5 as follows: "[Verizon] may not be permitted to treat dial-up calls to internet service providers ("ISPs") as non-compensable traffic for purposes of reciprocal compensation." The Petition explains Cox's position that ISP-bound traffic should be treated for compensation purposes as local rather than toll in accordance with the 1997 ruling by the Virginia State Corporation Commission ("Virginia Commission").²

At the time of filing the Petition, Cox was aware of the Commission's press release of April 19, 2001, announcing the adoption of an order dealing with compensation for ISP-bound traffic.³ This action responded to the remand by the U.S. Court of Appeals of the Commission's February 26, 1999 ruling that ISP-bound traffic was of mixed jurisdiction and possibly interstate in nature.⁴ Because the order had not been issued as of that due date of the Petition, Cox reserved its "right to modify its discussion of this issue in light of that order when it is released."⁵

² In a proceeding brought by Cox against Verizon, the Virginia Commission ruled that ISP-bound traffic is subject to reciprocal compensation as local traffic. See VA SCC Case No. PUC970069, issued October 24, 1997.

³ Petition at n. 14.

⁴ See *Bell Atlantic Telephone Cos. v. FCC*, 206 F.3d 1 (D.C. Cir. 2000).

⁵ Petition at n. 14.

On April 27, 2001, the Commission released the *Order on Remand and Report and Order* in the ISP-bound traffic proceeding.⁶ The ISP Order establishes an interim compensation regime for 3 years during which compensation for ISP-bound traffic is capped on a minute of use basis: (a) at \$.0015 for the first 6 months; (b) at \$.0010 for the next 18 months; and (c) at \$.0007 for either the last six months or until the Commission takes further action, whichever occurs later. It also imposes a cap on the total ISP-bound minutes for which a local exchange carrier (“LEC”) may receive this compensation and sets out a rebuttable presumption that traffic exchanged between LECs that exceeds a 3:1 ratio of terminating to originating traffic is ISP-bound traffic subject to compensation.

The ISP Order holds that the provisions of section 251(b)(5)⁷ of the Telecommunications Act of 1996 (“1996 Act”)⁸ do not extend to ISP-bound traffic and that such traffic “is predominately interstate access traffic” subject to section 201 of the Communications Act of 1934, as amended.⁹ Finally, the ISP Order provides that the rate caps for ISP-bound traffic are applicable only if the incumbent LEC offers to exchange all section 251(b)(5) traffic at the same rate.

In its answer to the Petition filed May 31, 2001 (“Answer”), Verizon alleged that Issue I-5 “has been rendered moot” by the ISP Order.¹⁰ Verizon argues that the Commission lacks jurisdiction to resolve Issue I-5 in this proceeding because the ISP Order preempted the authority of the state commissions to address this issue and the

⁶ Intercarrier Compensation for ISP Bound Traffic, *Order on Remand and Report and Order*, FCC 01-131, CC Docket Nos. 96-98 and 99-68 (rel. Apr. 27, 2001) (the “ISP Order”).

⁷ Section 251(b)(5) of the 1996 Act imposes a duty on all LECs to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

⁸ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁹ ISP Order, p. 3.

¹⁰ Answer, Exhibit A, p. 59.

Commission has assumed the jurisdiction of the Virginia State Corporation Commission in this matter. Verizon offers to “pay the interim rates prescribed by the Commission for reciprocal compensation on ISP-bound traffic, subject to the 3:1 ratio and growth cap limitations established by the Commission that are based on the number [of] minutes for which carriers previously were entitled to receive compensation under existing contracts.”¹¹ Verizon also offers “an interim rate structure for section 251(b)(5) traffic equal to the prescribed rates for ISP-bound traffic.”¹² N. 92 of the Answer’s Exhibit A states:

... Due to the timing of release of the FCC’s *ISP Remand Order*, Verizon’s interconnection agreements may not necessarily reflect the current state of Applicable Law. Should it be necessary for Verizon to modify the contracts to reflect the Commission’s Order, it will provide those changes to the Petitioners shortly. It is important to note, however, that if Petitioners elect to apply the Commission’s *ISP Remand Order* proxy rates to all local traffic in addition to internet traffic, this issue should be rendered moot.

B. VERIZON’S AMENDMENT TO EXISTING AGREEMENTS

To date, Verizon has not provided to the Petitioners its proposed modification to Verizon’s interconnection agreements. However, last month in an unrelated action, Verizon offered to amend the existing interconnection agreement of a Cox affiliate in California with contract language that, if accepted, will “conform your agreement to the terms of the [ISP Order].” On June 21, 2001, Verizon sent a letter (“June 21st Letter”) to Richard Smith of the Cox affiliate in California stating that Verizon had apprised Cox, by an industry notice dated May 14, 2001, of its “election to implement the intercarrier compensation regime for Internet traffic set forth in the [ISP Order].” *See* June 21st

¹¹ Answer, Exhibit A, pp. 60&61.

¹² Answer, Exhibit A, p. 61.

Letter, attached hereto as Exhibit 1. While the June 21st Letter appears to be directed specifically to the parties' interconnection agreement for California, it does assert that the election described therein applies to all Verizon operating companies with which Cox has an effective interconnection agreement.

Cox does not believe that the language proposed in the June 21st Letter is sufficient to resolve the parties' dispute over ISP-bound traffic at issue in this proceeding. The proposed amendment attached to the June 21st Letter merely declares that Internet traffic is not Local Traffic, and provides that the parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of Internet traffic shall be governed by the ISP Order. The entire proposed amendment (less introduction and execution clauses) is as follows:

Notwithstanding any other provision of the Agreement, Local Traffic does not include any Internet traffic. The Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of Internet traffic shall be governed by the Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound [sic] Traffic*, FCC 01-131, CC Docket Nos. 96-98 and 99-68.

As explained in more detail below, this general language falls far short of the specificity that both Cox and Verizon require to exchange ISP-bound traffic in Virginia. Indeed, if Verizon's proposed nationwide interconnection agreement amendment provides a hint as to the contract language modifications Verizon intends to offer Cox at some later date in this proceeding, Cox will be required to continue to pursue Commission resolution of Issue I-5.

C. THE JOINT DECISION POINT LIST

On June 22, 2001, the parties filed their Joint Decision Point List (“JDPL”) in which Cox stated:

Cox does not believe that this Issue I.5 has been rendered moot by the Commission’s issuance of the [ISP Order]. Cox believes however that revisions are needed to the contractual language proposed (prior to the release of this order) by each party in resolution of this issue. Verizon appears to agree with this conclusion, see Verizon’s Answer, Exhibit A at n. 92. Verizon stated there that it would “provide these changes to the Petitioners shortly,” and Cox will consider Verizon’s proposal as soon as it is received. The parties will notify the Commission of their progress in negotiating a resolution of this Issue I.5.

Cox further reserved the right to modify its rationale provided in the JDPL when it received Verizon’s proposed language.

II. THE ISP ORDER DOES NOT RESOLVE ISSUE I-5

A. ISSUE I-5 IS NOT MOOT

The ISP Order was intended by the Commission to cover a wide range of factual circumstances. Cox believes that the parties must negotiate a significant number of detailed provisions to specify how the Commission’s decision will be implemented in our particular situation. As an example, the ISP Order does not specify how the rate caps will be implemented for traffic exchanged in Virginia but rather leaves it up to the parties to determine their implementation on a case-by-case basis. That is, although the ISP Order generally establishes caps for ISP-bound minutes and a 3:1 ratio for differentiating ISP-bound traffic from other traffic, it does not dictate how these provisions are to be applied to the traffic exchanged by Cox and Verizon. The parties accordingly must agree upon a mechanism for determining the actual ratio of local traffic exchanged and the parties must

agree upon the actual rates that will apply to ISP-bound traffic. In fact, the ISP Order does not specify any contract language that should be used to implement its requirements.

Verizon blithely asserts that Issue I-5 has been addressed by the ISP Order and thus urges its dismissal from this proceeding. Verizon would have the Commission believe that the ISP Order is self-effectuating even for the renewal agreement now being arbitrated. However, the examples cited above demonstrate that the order is not self-effectuating and show that clear and specific contractual language in the renewal agreement is needed to address the implementation of the ISP Order. For these reasons, the Commission should direct the parties to continue to negotiate contract language to implement the ISP Order. Further, the Commission should preserve Issue I-5 (in revised form) for resolution in this proceeding, until or unless such language is agreed to by Cox and Verizon.

B. SETTLEMENT BY THE PARTIES IS HIGHLY UNLIKELY

Any hope that the parties will settle Issue I-5 through negotiations outside this arbitration proceeding is misplaced. The Commission's adoption of the ISP Order provides general guidance about how the issue of compensation for ISP-bound traffic exchanged between carriers should be handled. However, as discussed above, the ISP Order does not provide the necessary detailed instructions needed by the parties in arranging their business practices to give effect to this guidance.¹³

¹³ The ISP Order states: "The interim compensation regime we establish here applies as carriers re-negotiate expired or expiring interconnection agreements." ISP Order, p. 39.

Agreement on specific provisions concerning compensation for ISP-bound traffic to be included in the renewal agreement has so far eluded Cox and Verizon. That Cox and Verizon have failed to come to agreement as to terms reflecting their interpretations of the 1996 Act is not surprising. This all-too-common failure is clearly illustrated by the never-ending controversy over physical collocation – a stable and mature component of the 1996 Act. Section 251(c)(6) of the 1996 Act places what appears to be a strict duty on incumbent LECs to provide physical collocation of competitive LECs' equipment at the premises of the incumbents, except where space is limited. Yet, in every arbitration proceeding conducted by a state commission with which Cox is familiar, the state commissions have been compelled to resolve issues associated with collocation. As the Commission is aware, collocation issues also are present in this arbitration proceeding.

If carriers are constantly forced to arbitrate a non-monetary issue such as physical collocation, it can reasonably be expected that a monetary issue such as compensation for ISP-bound traffic will foster even more arbitration. Cox can safely predict that every arbitration proceeding conducted by the Commission will contain issues relating to compensation for ISP-bound traffic, notwithstanding the guidance offered by the ISP Order. Cox unfortunately believes that, based on the jurisdictional matters discussed below, the Commission can anticipate being asked to resolve many such future disputes.

Cox is committed to negotiating in good faith with Verizon in an effort to reach agreement on contract language concerning compensation for ISP-bound traffic for inclusion in the renewal agreement. But the prospect of successfully concluding this negotiation is dim, as the history of these overall negotiations has shown. And if Verizon proposes for the renewal agreement the same simplistic language offered in its

amendment for the existing agreement, then the positions of the parties appear to be very far apart indeed. This language is not acceptable to Cox for the renewal agreement because it would lead to protracted disputes over implementation of the ISP Order's provisions and because it does not account for the possibility that the ISP Order could be modified or reversed. Such disputes can readily be foreseen in view of the lack of detailed information about the manner and timing of necessary changes to the parties' billing practices inherent in such implementation. For these reasons, the Commission should not rely upon the parties, outside the context of this arbitration, to agree on appropriate contract language for the renewal agreement to implement the ISP Order.

III. THE FCC HAS JURISDICTION TO RESOLVE ISSUE I-5

Verizon attempts to contort the Commission's preemption of state authority over ISP-bound traffic compensation into the complete removal of the Commission's jurisdiction to arbitrate Issue I-5, which is granted by section 252(e)(5) of the 1996 Act. This specious argument would have no credibility even if the Commission had no authority other than that furnished by section 252(e)(5). But the jurisdiction of the Commission encompasses authority beyond that granted by this statutory provision.

First, assuming that the Commission's authority is limited by section 252(e)(5), as Verizon suggests, does not lead to the conclusion that the Commission cannot arbitrate the question of how ISP-bound traffic appropriately should be treated under an interconnection agreement. While the Commission did divest state commissions of jurisdiction to determine how compensation for such traffic would be determined, the ISP Order does not divest those commissions of the power to arbitrate disputes about how to implement the FCC's requirements. Doing so would have been both imprudent and

contrary to the way that other federal mandates have been addressed in interconnection arbitrations.

The precise wording of the preemption of state commissions in the ISP Order is as follows: “Because we now exercise our authority under section 201 to determine the appropriate intercarrier compensation for ISP-bound traffic . . . state commissions will no longer have the authority to address this issue.” ISP Order, ¶ 82. While this language plainly removes the power to set the underlying terms of compensation for ISP-bound traffic, it does not in any way remove the authority given to the states to resolve disputes relating to the treatment of such traffic, so long as the states do so in a manner consistent with the FCC’s requirements. In this way, the Commission’s directives in the ISP Order are like the FCC rules governing all LEC and ILEC obligations under section 251, which set specific requirements but do not affect a state’s authority to arbitrate disputes about contractual provisions related to those requirements. *See generally* 47 C.F.R. Part 51, subparts C, D.

This approach is consistent with the way every other federally mandated provision of interconnection has been addressed since the enactment of the 1996 Act. All state arbitrations are bound by the FCC’s rules, but the state commissions still arbitrate matters that arise under those rules. As the Commission explained in the Local Competition Order:

The state commission will arbitrate individual issues specified by the parties, or conceivably may be asked to arbitrate the entire agreement. In the event that a state commission must act as arbitrator, it will need to ensure

that the arbitrated agreement is consistent with the Commission's rules.¹⁴

For instance, federal rules govern the points of interconnection that must be made available by an ILEC. *See* 47 C.F.R. § 51.305(a)(2). If, however, an ILEC refuses to agree to language in compliance with this rule in a negotiation, a state commission not only is permitted to arbitrate the issue, but is required to do so. Moreover, if there is a dispute about whether the language proposed by one party correctly implements the federal mandate, a state commission addresses that issue as well. The extent of state commission authority to address compensation for ISP-bound traffic is no different because the authority granted by Section 252 is to arbitrate “any open issues” between the parties, even if those issues are governed by federal law. 47 U.S.C. § 252(b)(1), (4).

Even if it were permissible under Section 252 to divest the states of the power to arbitrate disputes relating to implementation of the ISP Order, it would be imprudent to do so. If the Commission took this authority away from the states, it would be faced with every dispute concerning how to reflect the requirements of the ISP Order in interconnection agreements. Given that the ISP Order's compensation requirements intersect with parties' reciprocal compensation obligations and given that there are significant variations in how parties address reciprocal compensation in their agreements, responding to each and every of these disputes would be a monumental and misguided task for the Commission to undertake.

Further, it would be highly impractical for carriers to attempt to negotiate interconnection agreements that exclude ISP-bound traffic from their coverage in the

¹⁴ Implementation of the Local Competition Rules of the Telecommunications Act of 1996, *First Report*

hopes that the Commission would arbitrate disputes over the treatment of such traffic in a separate, federal proceeding. While this type of carve-out might assist the Commission and the state commissions in delineating their respective jurisdiction, it would lead to innumerable difficulties in enforcing the parties' interconnection agreements. Indeed, because a carrier cannot take advantage of the rate caps for ISP-bound traffic adopted in the ISP Order unless it also adopts those caps for all section 251(b)(5) traffic, the two types of traffic are inextricably linked and logically should be addressed in a single contract. The jurisdictional nature of the traffic, federal for ISP-bound and state for section 251(b)(5), should not force the parties to negotiate either one defective contract covering only part of the traffic or two separate yet intertwined contracts.

The Commission therefore should hold that its preemption of state authority over the compensation regime for ISP-bound traffic does not alter carriers' ability to negotiate a single interconnection agreement that is subject to the dual jurisdiction of the Commission and the states. The Commission should further rule that state commissions retain their authority to arbitrate disputes relating to the implementation of the ISP Order. Moreover, where, as here, the Commission has stepped into the shoes of a state for purposes of arbitrating an interconnection agreement, the Commission should find that it has assumed the jurisdiction formerly enjoyed by the state and will exercise that authority to arbitrate disputes concerning ISP-bound traffic.

Finally, even if the Commission had divested state commissions of all authority to arbitrate disputes concerning implementation of the ISP Order, that does not mean that the Commission would have no authority to address such disputes in these proceedings.

and Order, 11 FCC Rcd 16499, 16566-7 (1996).

The Commission held in the ISP Order that it had jurisdiction over ISP-bound traffic under Section 201 of the Communications Act. ISP Order, ¶ 52. Verizon's argument proceeds from the notion that the combination of the ISP Order and the limitations of Section 252(e)(5) makes that Section 201 jurisdiction disappear. There is no basis for that theory. Preemption under Section 252(e)(5) *expands* the Commission's jurisdiction by giving it authority otherwise reserved to state commissions.¹⁵ Any limitations imposed by Section 252(e)(5) are on that expanded power, not on the Commission's existing power under Section 201 or any other provision of the Communications Act. Thus, even if the Commission could not address issue I-5 under Section 252(e)(5), it could do so under Section 201. Such authority may be exercised in an arbitration proceeding as readily as in any other method of adjudication or through rulemaking.

IV. CONTRACT LANGUAGE FOR RESOLVING ISSUE I-5

Prior to receiving Verizon's Motion, Cox thought that Verizon intended to satisfy its commitment in the Answer to provide revised contract language concerning ISP-bound traffic to the Petitioners shortly after the Answer was filed.¹⁶ Cox did not believe initially that the incomplete amendment proposed by Verizon in the June 21st Letter to a Cox affiliate was provided in an attempt to satisfy that commitment. Cox thus was surprised when Verizon moved to dismiss Issue I-5 without carrying out its commitment to provide contract language for the Virginia renewal agreement. It occurred to Cox then that Verizon might have intended the proposed amendment accompanying the June 21st Letter to serve that function, although that letter is clear that the amendment was designed

¹⁵ In fact, the Supreme Court has held that the 1996 Act extended, rather than limited, the Commission's authority overall. *AT&T v. Iowa Utilities Board*, 525 U.S. 366, ___, 119 S. Ct. 721, 729-733.

for an existing contract. Verizon's Motion makes no reference to proposed contract language for the renewal agreement. Cox therefore is unsure whether Verizon will provide further contract language to Cox on Issue I-5, as it stated it would do in the Answer, or whether the amendment attached to the June 21st Letter constitutes Verizon's effort to comply with that commitment.

Moreover, the Answer states that Verizon "opposes the language proposed by the Petitioners."¹⁷ Verizon was given notice in the Petition that Cox's position could change after it had a chance to review the ISP Order, which had not been released at that time.¹⁸ Later, Cox stated in the JDPL that it believes revisions are needed to the contractual language that it had proposed to Verizon prior to the release of the ISP Order. After reviewing the ISP Order, Cox has concluded that its position on Issue I-5 should be changed and that its proposed contract language to resolve that issue should be revised.

Cox's current position on Issue I-5 is that the parties should adopt language designed to implement the ISP Order's provisions as the Commission intended. On June 27, 2001, Cox submitted to Verizon contract language that Cox proposes for inclusion in the renewal agreement. *See* Cox's June 27th proposal, attached hereto as Exhibit 2. This submission represents Cox's best effort to apply the guidance of the ISP Order to the factual circumstances surrounding the exchange of traffic in Virginia between Cox and Verizon during the term of the renewal agreement.

A brief comparison of Cox's June 27th proposal (Exhibit 2) with Verizon's amendment attached to the June 21st Letter (Exhibit 1) discloses radically different

¹⁶ Answer, Exhibit A at n. 92.

¹⁷ Answer, Exhibit A, p. 60.

opinions about the contract language needed to implement the ISP Order. Experience has informed Cox that an absence of detail surrounding contractual rights and obligations generally leads to dispute, wasting time and resources to resolve. Thus, the most prudent course is to make sure the renewal agreement contains an adequate description of the parties' understanding about their specific tasks needed to comply with the ISP Order. In this way, the parties may act effectively and efficiently in altering their operations to bring them into compliance.

Apart from notifying Cox of the receipt of the June 27th proposal, Verizon has not commented on the contract language submitted by Cox to resolve Issue I-5. Cox stands ready to negotiate such language for inclusion in the renewal agreement to settle this matter as quickly as possible. Because this arbitration proceeding is the proper forum for resolving Issue I-5, Cox and Verizon should exert all reasonable efforts to reach agreement on contract language to adhere to the schedule established here. Unless such efforts bear fruit within a matter of days, Cox will submit an amended petition for arbitration. This amended petition will restate the issue, set out Cox's position on the issue as restated and propose contract language to resolve it. Cox opposes any deferral of the Commission's consideration of Issue I-5 in this arbitration proceeding.

V. CONCLUSION

For the reasons stated above, Cox respectfully requests that the Commission deny Verizon's Motion with respect to Issue I-5. *The Commission should hold that Issue I-5 is ripe for decision herein because the ISP Order has not resolved this matter.* Cox intends to continue negotiating with Verizon in a good faith effort to resolve the eleven issues now

¹⁸ Petition at n. 14.

in arbitration, and Issue I-5 will be addressed in this fashion. However, Cox believes that it is extremely likely, given the history of its negotiations with Verizon concerning the renewal agreement, that Issue I-5 cannot be settled by the parties. Therefore, the Commission should not defer its consideration of Issue I-5. Cox respectfully requests the Commission to grant Cox the relief sought herein and resolve Issue I-5 in accordance with Cox's submissions in this case.

Respectfully submitted,

COX VIRGINIA TELCOM, INC.



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July 9, 2001

CERTIFICATE OF SERVICE

I, Dawn V. Freeman, a legal secretary at Dow, Lohnes & Albertson, PLLC do hereby certify that on this 9th day of July, 2001, copies of the foregoing "Petition for Arbitration of Cox Virginia Telcom, Inc." were served as follows:

TO FCC as follows (by hand):

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TO AT&T as follows:

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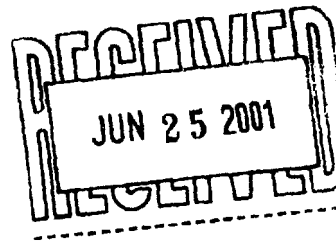

Dawn V. Freeman

EXHIBIT 1



Jack H. White
Vice President and Associate General Counsel

verizon

1320 North Courthouse Road
Arlington, VA 22201

June 21, 2001

BY CERTIFIED U.S. MAIL

Richard Smith
Dir., Western Region Reg. Affairs
Cox California Telcom II, L.L.C.
2200 Powell Street, #795
Emeryville, CA 94608

Re: Implementation of FCC's Order on Remand

Dear Customer:

In a notice dated May 14, 2001, you were advised of Verizon's election to implement the intercarrier compensation regime for Internet traffic set forth in the FCC's *Order on Remand and Report and Order*, CC Docket Nos. 96-98, 99-68 (adopted April 18, 2001) (the "Order on Remand"). This election applies to all Verizon operating telephone companies with which your company has an effective interconnection agreement.

Although it is Verizon's position that the compensation regime set forth in the Order on Remand is self-effecting by operation of various provisions of your interconnection agreement, including its change in law provisions, Verizon has prepared a short amendment, attached hereto, that conforms your agreement to the terms of the Order on Remand. Without waiving Verizon's position that this amendment is not required to implement the terms of the Order on Remand, we are requesting that you review the attached amendment and indicate your consent thereto by signing two copies of the document and returning them to:

Ms. Antonia Siebert
Verizon Legal Department
1320 North Court House Road, 8th Floor
Arlington, VA 22201
Phone: 703-974-4851
Fax: 703-974-0259

Jack H. White
Implementation of FCC's Order on Remand
June 21, 2001

Once we have received the two signed documents, a single fully executed document will be returned to you.

If you wish to suggest changes to the attached amendment, we are ready to meet with you by telephone or otherwise to negotiate appropriate revisions. Please provide your proposed changes to Ms. Siebert as soon as possible, and let her know when you or your representative will be available to confer.

As stated in Verizon's industry notice of May 14, 2001, Verizon has also offered, as required by the Order on Remand, to amend your interconnection agreement in each state to implement an alternative rate plan for termination of reciprocal compensation traffic originated by either party that would mirror the rates applicable to Internet traffic in that state. We expect that this alternative rate plan will only be of interest to carriers with a net balance of traffic in Verizon's favor; but if you should nevertheless wish to adopt that alternative rate plan in the state of California, please advise Ms. Siebert of that fact and we will forward an appropriate form of amendment.

Sincerely,

A handwritten signature in black ink, appearing to read "J. White", is positioned above the printed name.

Jack H. White

Attachment

AMENDMENT NO. __
to the
INTERCONNECTION AGREEMENT
between

VERIZON CALIFORNIA INC., f/k/a GTE CALIFORNIA INCORPORATED
and

Cox California Telecom

This Amendment (the "Amendment") to the Interconnection Agreement between Verizon California Inc. f/k/a GTE California Incorporated and Cox California Telecom (the "Agreement") is effective June 14, 2001.

Notwithstanding any other provision of the Agreement, Local Traffic does not include any Internet traffic. The Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of Internet traffic shall be governed by the Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98 and 99-68.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed and delivered by their duly authorized representatives.

Cox California Telecom

Verizon California Inc. f/k/a GTE California
Incorporated

By: _____

By: _____

Printed: _____

Printed: Jeffrey A. Masoner

Title: _____

Title: Vice-President - Interconnection
Services Policy & Planning

EXHIBIT 2

6/27/01

Marilyn,

For your consideration, Cox proposes the following modifications to our interconnection agreement in order to accommodate the FCC's Order on Remand and Report and Order in CC Docket Nos. 96-98 & 99-68, FCC 01-131, released April 27, 2001 ("ISP Order"). We'd like to discuss these proposed changes at your earliest convenience.

Marvel

Replace the definition of "Internet Traffic" with the following:

1.36 "Internet Traffic" shall have the same meaning, when used in this Agreement, as the term "ISP-bound traffic" is used in the FCC's Order on Remand and Report and Order in CC Docket Nos. 96-98 & 99-68, FCC 01-131, released April 27, 2001. Generally speaking, "Internet Traffic" refers to telecommunications traffic delivered to Internet service providers.

Modify the definition of "Local Traffic" with the following:

1.39 "Local Traffic" means traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network, within a given local calling area, or expanded area service ("EAS") area (based on the rate center point of the originating and terminating NPA-NXXs of the callers), as defined in BA's effective Customer tariffs, or, if the Commission has defined local calling areas applicable to all LECs, then as so defined by the Commission. Local Traffic **does not include** any Internet Traffic (as such term is hereinafter defined). Generally speaking, the term "Local Traffic" shall have the same meaning, when used in this Agreement, as the term "251(b)(5) traffic" is used in the FCC's Order on Remand and Report and Order in CC Docket Nos. 96-98 & 99-68, FCC 01-131, released April 27, 2001.

Replace the definition of "PLU" with the following:

1.52 "Percent Local Usage" or "PLU" is a factor that distinguishes the intraLATA, intrastate portion of minutes from the interLATA, intrastate portion of minutes of traffic exchanged via Traffic Exchange Trunks. PLU is a whole number developed through consideration of every call in which the calling and called party are

located within the same Rate Center Area. The PLU factor is applied to traffic only after the PIU factor has been applied for jurisdictional separation of traffic. The PLU factor is applied to traffic before a ratio is applied to identify Internet Traffic minutes.

Replace the definition of "Toll Traffic" with the following:

1.71 "Toll Traffic" means traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that Party's network and is not Local Traffic, Internet Traffic or Ancillary Traffic. Toll Traffic may be either "IntraLATA Toll Traffic" or "InterLATA Toll Traffic," depending on whether the originating and terminating points are within the same LATA.

Modify 5.7.1 as follows:

5.7.1 The Parties shall compensate each other for the transport and termination of Local Traffic over the terminating carrier's switch in accordance with Section 251(b)(5) of the Act at the rates provided in the Detailed Schedule of Itemized Charges (Exhibit A hereto), as may be amended from time to time in accordance with Exhibit A and subsection 20.1 or, if not set forth therein, in the applicable Tariff(s) of the terminating Party, as the case may be. These rates are to be applied at the Cox-IP for traffic delivered by VZ-VA, and at the VZ-VA-IP for traffic delivered by Cox. No additional charges shall apply for the termination of such Local Traffic delivered to the VZ-VA-IP or the Cox-IP by the other Party, except as set forth in Exhibit A. When such Local Traffic is terminated over the same trunks as IntraLATA Toll Traffic, any port or transport or other applicable access charges related to the delivery of IntraLATA Toll Traffic from the IP to an end user shall be prorated to be applied only to the IntraLATA Toll Traffic. The designation of traffic as Local Traffic for purposes of Reciprocal Compensation shall be based on the originating and terminating NPA-NXXs points of the complete end-to-end communication. ~~Reciprocal Compensation shall apply to Internet Traffic handed off from one Party to the other Party via the switched network for delivery to an Internet Service Provider ("ISP") for carriage over the Internet.~~

Add a new subsection 5.7.7 as follows:

5.7.7 Reciprocal Compensation for Internet Traffic

5.7.7.1 Scope

(a) This Subsection is intended to implement the FCC's Order on Remand and Report and Order in CC Docket Nos. 96-98 & 99-68, FCC 01-131, released April 27, 2001 ("ISP Order"), for any period in which the ISP Order is effective during the Term of this Agreement. The terms used in this section shall have the same meaning as those terms are used in the ISP Order. Additionally, as used in this Agreement, the term "Internet Traffic" shall have the same meaning as the term "ISP-bound traffic" is used in the ISP Order.

(b) The Parties agree to pay each other for terminating Internet Traffic and section 251(b)(5) traffic in accordance with the terms and conditions of this section. For purposes of this section, Internet Traffic and section 251(b)(5) traffic shall be identified in accordance with the provisions of subsection 4 below.

(c) Upon the occurrence of any one of the following conditions: (1) the ISP Order is not allowed to go into effect; (2) the ISP Order is revised or reversed by a court of competent jurisdiction; or (3) the ISP Order is affected by any legislative or other legal action; the Parties reserve all of their rights and remedies, including those to amend, alter, or revise this Agreement.

5.7.7.2 Rates

(a) For the Term of this Agreement, Reciprocal Compensation rates shown in Exhibit 1 will apply to the exchange of all 251(b)5 traffic.

(b) For the period beginning on June 14, 2001 and ending on December 13, 2001, the terminating Party will bill the originating Party a rate of \$.0015 per minute of use (MOU) for Internet Traffic delivered to the terminating Party's Tandem and/or a rate of \$.00927 per MOU for Internet Traffic delivered directly to the terminating Party's End Office.

(c) To the extent that this Agreement remains in effect, beginning on December 14, 2001, and ending on June 13, 2003, the terminating Party will bill the originating Party a rate of \$.0010 per MOU for Internet Traffic delivered to the terminating Party's Tandem and/or a rate of \$.00927 per MOU for Internet Traffic delivered directly to the terminating Party's End Office.

(d) To the extent that this Agreement remains in effect, beginning on June 14, 2003, and ending on June 13, 2004, the terminating Party will bill the originating Party a rate of \$.0007 per MOU for Internet Traffic delivered to the terminating Party's Tandem and/or a rate of \$.000649 per MOU for Internet Traffic delivered directly to the terminating Party's End Office.

(e) The ISP Order specifies that, in the event the FCC does not take further action within the final period during which the \$.0007 per MOU rate cap will be applicable to Internet Traffic, that period will be extended until the FCC takes such further action. The Parties agree that the \$.0007 per MOU rate for tandem-routed traffic and the \$.000649 per MOU rate for End Office-routed traffic will continue in effect for Internet Traffic beyond June 13, 2004, if the FCC fails to take such further action by that date, to the extent this Agreement remains in effect during such period.

5.7.7.3 Ratio

(a) The FCC has adopted a rebuttable presumption that traffic delivered to a carrier that exceeds a 3:1 ratio of terminating to originating traffic is Internet Traffic. Therefore, the combined Internet Traffic and section 251(b)(5) traffic shall be separated by applying a ratio factor of 3:1 until such time as either Party successfully rebuts this presumption in a proceeding conducted by a regulatory authority or court of competent jurisdiction. All such traffic exchanged between the Parties up to a 3:1 ratio of terminating to originating traffic shall be deemed to be section 251(b)(5) traffic subject to the Reciprocal Compensation rates shown in Exhibit 1. Except as may be modified by subsection 4 below, the remainder of such traffic, i.e., all minutes exceeding the 3:1 ratio of terminating to originating traffic, shall be deemed to be Internet Traffic subject to the rates established in subsection 2 above. In the event that a regulatory authority or court of competent jurisdiction enters a final order establishing a different ratio factor for the separation of Internet Traffic and section 251(b)(5) traffic that is applicable to this Agreement, the Parties agree that such different ratio factor shall be substituted for the 3:1 ratio factor for purposes of implementing this section. Unless such final order specifies a different effective date for the different ratio factor, such substitution should become effective on the effective date of such final order.

(b) In order that the Parties may calculate the balance of traffic exchanged, no later than the 11th business day following the close of the monthly billing cycle, each Party shall furnish the other Party with a summary of the total minutes of combined Internet Traffic and section 251(b)(5) traffic received from the other Party during the preceding monthly billing cycle. The summary shall include the cumulative minutes of use associated with every call in which the calling and called party's NPA-NXX (or LNP-equivalent identifier) are located within the Local Calling Area and any extended service area, as defined by Verizon's tariffs.

5.7.7.4 Cap on Total Internet Traffic Minutes

(a) For Internet Traffic exchanged during the year 2001, and to the extent this Agreement remains in effect during that year, compensation at the rates set out above shall be billed by the terminating Party to the originating Party on Internet Traffic minutes only up to a ceiling equal to, on an annualized basis, the number of Internet Traffic minutes for which the terminating Party was entitled to compensation during the first quarter of 2001, plus a ten percent growth factor. The Parties agree that the number of Internet Traffic minutes for which the terminating Party was entitled to compensation

during the first quarter of 2001 is _____. Therefore, the cap for total Internet Traffic minutes for 2001, expressed on an annualized basis, is _____, which is calculated by multiplying the first quarter total by four and increasing the result by ten percent.

(b) For Internet Traffic exchanged during the year 2002 and to the extent this Agreement remains in effect during that year, compensation at the rates set out above shall be billed by the terminating Party to the originating Party on Internet Traffic minutes only up to a ceiling equal to the number of Internet Traffic minutes for which the terminating Party was entitled to compensation in 2001, plus a ten percent growth factor. The Parties agree that the cap for total Internet Traffic minutes number of Internet Traffic minutes for which the terminating Party is entitled to compensation in 2002 is _____, which is calculated by increasing the cap for total Internet Traffic minutes for 2001 by ten percent.

(c) For Internet Traffic exchanged during the year 2003 and to the extent this Agreement remains in effect during that year, compensation at the rates set out above shall be billed by the terminating Party to the originating Party only on Internet Traffic minutes up to the year 2002 cap determined in subsection B above.

(d) The cap will be applied on an annual basis. The terminating Party shall bill the originating Party monthly for all Internet Traffic received until the annual cap is reached, at which point, the terminating Party will cease further billing of Internet Traffic for the remainder of that calendar year.

(e) The minutes of Internet Traffic that exceed the ceiling established for each year shall be exchanged by the Parties on a bill and keep basis, without compensation being paid on such excess minutes by either Party.

Modify instances of 'Local Traffic' as follows:

4.4.3 Mid-Span Fiber Meet arrangements shall be used only for the termination of Local Traffic, ~~Internet Traffic~~ and IntraLATA Toll Traffic unless and until such time as the Parties have agreed to permit its utilization for other traffic types and unless and until the Parties have agreed in writing on appropriate compensation arrangements relating to the exchange of other types of traffic over such Mid-Span Fiber Meet, and only where facilities are available.

5.6.1.1 If the originating Party passes CPN on ninety-five percent (95%) or more of its calls, the receiving Party shall bill the originating Party the Local ~~and Internet~~ Traffic call completion rate, Intrastate Exchange Access rates,

intrastate/interstate Tandem Transit Traffic rates, or interstate Exchange Access rates applicable to each minute of traffic, as provided in Exhibit A and applicable Tariffs, for which CPN is passed. For any remaining (up to 5%) calls without CPN information, the receiving Party shall bill the originating Party for such traffic as Local and Internet Traffic call completion rate, intrastate Exchange Access rates, intrastate/interstate Tandem or Tandem Transit Traffic rates, or interstate Exchange Access rates applicable to each minute of traffic, as provided in Exhibit A and applicable Tariffs, in direct proportion to the minutes of use of calls passed with CPN information.

5.6.1.2 If the originating Party passes CPN on less than ninety-five percent (95%) of its calls and the originating Party chooses to combine Local, Internet and Toll Traffic on the same trunk group, the terminating Party shall bill its interstate Switched Exchange Access Service rates for all traffic passed without CPN unless the Parties agree that such other rates should apply to such traffic.

5.6.2 Either Party may classify traffic as either Local and Internet Traffic or Toll Traffic for billing purposes by using PIU and PLU factors, in lieu of CPN information. The PIU and PLU factors applicable upon the Effective Date are specified in Schedule 5.6. Such factors may be updated by the originating Party quarterly by written notification.

17.1.2 The Parties will provide CCS Signaling to each other, where and as available, in conjunction with all Local Traffic, Internet Traffic, Toll Traffic, Meet Point Billing Traffic, and Transit Traffic. The Parties will cooperate on the exchange of TCAP messages to facilitate interoperability of CCS-based features between their respective networks, including all CLASS Features and functions, to the extent each Party offers such features and functions to its Customers. All CCS Signaling parameters will be provided upon request (where available), including called party number, Calling Party Number, originating line information, calling party category, and charge number. All privacy indicators will be honored. The Parties will follow all Ordering and Billing Forum-adopted standards pertaining to CIC/OZZ codes. Where CCS Signaling is not available, in-band multi-frequency ("MF") wink start signaling will be provided. Any such MF arrangement will require a separate local trunk circuit between the Parties' respective switches in those instances where the Parties have established End Office to End Office high usage trunk groups. In such an arrangement, each Party will output the full ten-digit telephone number of the called party to the other Party.

SCHEDULE 4.2

INTERCONNECTION POINTS FOR DIFFERENT TYPES OF TRAFFIC

Each Party shall provide the other Party with Interconnection to its network at the following points for transmission, routing and termination subject to the availability of facilities. Compensation for such facilities will be as set forth in Exhibit A or as provided elsewhere herein.

1. For the termination of Local Traffic, ~~Internet Traffic~~ or Toll Traffic originated by one Party's Customer and terminated to the other Party's Customer, at the points set forth in Section 4 of the main body of the Agreement.

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SCHEDULE 4.2

INTERCONNECTION POINTS FOR DIFFERENT TYPES OF TRAFFIC

Each Party shall provide the other Party with Interconnection to its network at the following points for transmission, routing and termination subject to the availability of facilities. Compensation for such facilities will be as set forth in Exhibit A or as provided elsewhere herein.

5. For SS7 signaling originated by:

(a) Cox, at mutually agreed-upon Signaling Point of Interconnection(s) ("SPOI") in the LATA in which the Local, ~~Internet~~ or Toll Traffic originates, over CCSAC links provisioned in accordance with Bellcore GR-905 and Verizon Supplement Common Channel Signaling Network Interface Specification (VZ-VA 905).